

City Council Committee Meeting as a Whole
DANBURY CITY COUNCIL
Richter Park Cell Tower
July 25, 2016

(13)

Honorable Mayor Mark D. Boughton
Members of the City Council

President Cavo called the Committee meeting to order at 7:25 p.m.

COUNCIL MEMBERS PRESENT: Philip D. Curran, Michael J. Esposito, Warren Levy, Colleen Stanley, Gregg Seabury, Andrew Wetmore, Irving M. Fox, John Priola, Joe Cavo, Christopher J. Arconti, John J. Esposito, Duane Perkins, Ben Chianese, Nancy Cammisa, Paul T. Rotello, and Joseph Scozzafava.

COUNCIL MEMBERS ABSENT: Christina Chieffalo recently had a baby; Vincent DiGilio is out of town on business; Thomas Saadi is attending to business; and Fred Visconti and Elmer Palma are at family functions.

PRESENT: 16 ABSENT: 5.

ALSO PRESENT: Laszlo L. Pinter, Deputy Corporation Counsel; Robert J. Yamin, Corporation Counsel; David St. Hilaire, Director of Finance; Sharon Calitro, Planning Director; and Antonio Iadarola, Public Works Director.

Richter Park Cell Tower

Mr. Pinter suggested specific wording for the motion and responded to Mr. Chianese by giving a brief overview of the agreement. Attorney Daniel Rosemark responded to questions regarding compensation, possible locations, safety, and further details. He also responded to questions from Mr. Perkins regarding locations and from Mr. Scozzafava regarding maintenance. Mr. Curran responded to Mr. Rotello regarding potential neighbor objections.

A motion was made by Irving Fox to move the question. The motion carried 12-4, John Esposito, Duane Perkins, Ben Chianese, and Paul Rotello dissenting.

A motion was made by Warren Levy, seconded by Gregg Seabury, as amended, to recommend the authorization and transfer by the licensee of such parcels of real property as identified and designated through the Stanley Lasker Richter Memorial Park Authority by a site License Agreement with Bey Communications subject to the further review and approval requirements set forth by the rules. The motion carried 13-3, John Esposito, Duane Perkins, Ben Chianese dissenting.

The Committee ended discussion of this item at 7:51 p.m.

Respectfully submitted,

Lori Goor
Recording Secretary

Attest,
Mark D. Boughton, Mayor



(18-1)

March 24, 2016

VIA IN-HAND DELIVERY

— FROM 4/5/16 CC MEETING —

Mr. Joseph M. Cavo, President
City Council
City of Danbury – City Hall
155 Deer Hill Avenue
Danbury, Connecticut 06810

Re: Stanley Lasker Richter Memorial Park Authority ("Richter Park")
Wireless Communications Facility – Cellular Tower

Dear Councilman Cavo:

On behalf of Richter Park and pursuant to the meeting held by the City Council on December 2, 2014, I am writing to inform the City Council that Richter Park has reached a tentative agreement to place a wireless communications facility on the Richter Park managed property ("Site License"). Accordingly, I have attached a copy of the proposed Site License and summary of the transaction for the City Council's review and consideration.

The RPA requests that this matter be added to the agenda for the City Council's meeting scheduled for April 5, 2016 and we look forward to reviewing the project with the City Council or with an ad-hoc committee at its earliest convenience.

Thank you for your attention to this matter.

Very truly yours,

STANLEY LASKER RICHTER MEMORIAL PARK AUTHORITY

cc: Jean Natale; Legislative Assistant
Laszlo Pinter, Deputy Corporation Counsel



MEMORANDUM

Site License Agreement

Bay Communications II

Proprietary and Confidential

DATE: February 26, 2015
TO: The Stanley Lasker Richter Memorial Park Authority
FROM: Daniel Rosemark *DR*
RE: Summary of Terms and Conditions

SUMMARY

1. Status. The Stanley Lasker Richter Memorial Park Authority ("RPA") issued a Request for Proposal ("RFP") for the installation of a wireless communications facility ("WCF") on the golf course property. During the RFP process, Bay Communications II ("Bay") was identified as the bidder most aligned with the commercial and legal terms proposed by the RPA. The RPA and Bay subsequently negotiated a site license agreement ("SLA"). The RPA and Bay recently finalized the terms and conditions of the SLA, contingent upon the review of the SLA by the City of Danbury Corporation Counsel's Office and by board vote of the RPA. Once the SLA is fully executed by the parties, Bay will commence the marketing and due diligence activities until Bay secures a sublicense agreement with a wireless carrier. A sublicense with a wireless carrier is a requirement before Bay can file an application with the Connecticut Siting Council for the right to install, operate and maintain the WCF on the golf course property. A summary of the key terms and conditions of the SLA are provided below.

2. Site License Agreement.

License	The RPA has licensed approximately 2,500 square feet (50' x 50') in order to locate a WCF with an estimated tower height of 150' above ground level to accommodate national and regional wireless carriers as well as City of Danbury Fire and Police ("Public Safety").
Public Safety	Both Fire and Police will be granted the right to locate their respective equipment on the tower and in the WCF at no cost during the term of the SLA. Bay has agreed to install a meter backboard and conduits to allow for power to the Public Safety equipment. Public Safety will be required to purchase, install and operate its equipment at its own cost and expense, including electricity.
Option Period	Bay has been granted an option up to 24 months to market and perform certain due diligence activities in an effort to secure occupancy. Once a wireless carrier is secured, Bay will commence filing the necessary permits before the Connecticut Siting Council. If Bay is unable to secure a wireless carrier and file within the 24 month period, the RPA has the right to terminate the SLA.
Term	Total of 30 years. The Initial Term of the SLA is 10 years with the right of Bay to automatically renew the SLA for an additional period of up to 20 years (four 5 year periods).
Restricted Construction and Maintenance Period	Bay and its sublicensees are subject to certain operational restrictions between March 1 and November 1 to ensure that such activities are secondary to the primary purpose of the golf course use.
License Fee	40% of gross revenue for months 1-60. 50% of gross revenue commencing month 61 and continuing through month 360, if Bay continues for the full term. Gross revenue is based on the amount charged by Bay to any and all sublicensees, including any and all annual increases, amendments, modifications or other changes, without any offset or reduction.
Additional Compensation	Up to \$12,000 to cover legal and consultant fees to be paid to the RPA: - \$5,000 upon signature; and - \$7,000 upon commencement of WCF construction. \$5,000 on each and every sublicense agreement signed between Bay and the wireless carriers.
Annual Income Statements; Meetings; Sublicense Agreements	Bay is to provide bi-annual income statements to the RPA; meet with the RPA at least twice per year (at RPA's request) to discuss Bay's efforts to achieve full occupancy on the WCF; and will provide copies of the sublicense agreements (and amendments) to provide transparency to the RPA on the WCF operations.

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Termination	The RPA has certain rights to terminate the SLA during the Option Period, if Bay does not meet its due diligence and marketing obligations. Thereafter, the RPA can terminate the SLA if Bay does not cure a default of the SLA within the applicable period of time. Bay can terminate during the Option Period if the property is not suitable for a WCF. Thereafter, Bay can terminate if it elects not to exercise its renewal rights or if the RPA is in default of the SLA, and the default extends beyond the applicable cure period.
Insurance	Usual and customary insurance required by Bay and its contractors, subcontractors and sublicensees.
Removal Bond	Bay will post a removal bond in the amount of \$50,000 in the event that Bay does not remove the WCF at the end of the term or if the SLA is earlier terminated.
Indemnity	Bay will indemnify the RPA, the City of Danbury and each of their respective board members, council members, officers, employees and agents for claims arising under Bay's installation and operation of the WCF.
Limitation of Liability	The RPA's limitation of liability is up to 12 months of amounts paid by Bay under the SLA.
Law/Jurisdiction	The SLA is governed by laws of state of Connecticut, all matters to take place in Danbury Superior Court or U.S. District Court for District of Connecticut.

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SITE LICENSE AGREEMENT

THIS SITE LICENSE AGREEMENT (this "Agreement") is entered into this ____ day of _____, 2016 (the "Effective Date") between Bay Communications II, LLC, a Delaware limited liability company with a principal place of business located 391 Oakland Street, Second Floor Rear Mansfield, MA 02048 (the "Licensee"), and The Stanley Lasker Richter Memorial Park Authority, an authority established pursuant to the Connecticut General Statutes, with a principal place of business located at 100 Aunt Hack Road, Danbury, Connecticut 06811 (the "RPA"). The RPA and the Licensee are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the RPA, as an authority acting pursuant to the Connecticut General Statutes, manages certain real property owned by the City of Danbury commonly known as The Stanley Lasker Richter Memorial Park Golf Course located at 100 Aunt Hack Road in the City of Danbury, County of Fairfield, State of Connecticut, which is more particularly described and depicted on Exhibit A, attached hereto and incorporated herein by reference (the "Property");

WHEREAS, the primary purpose of the Property is for the recreational use and operation of a community golf course;

WHEREAS, Licensee, among other things, (i) is an independent owner and operator of wireless communication facilities; (ii) has commercial agreements in place and/or extensive relationships with all of the Wireless Carriers that conduct business in and around the vicinity of the Property, and (iii) desires to utilize its expertise as a builder and operator of wireless communications facilities to market, design, build, operate and maintain a wireless communications facility on the Property as more particularly described herein and subject to the primary purpose of the Property; and

WHEREAS, Licensee and the RPA desire to establish their respective rights and responsibilities for the design, construction, operation and maintenance of a new wireless communications facility on the Property in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the RPA and the Licensee hereby agree as follows:

AGREEMENT

1.0 LICENSE.

1.1 Licensed Premises. Subject to the terms and conditions of this Agreement, the RPA hereby grants Licensee the following: (i) exclusive rights to a 50' x 50' foot parcel of ground space containing approximately 2,500 square feet (the "Tower Parcel"), (ii) non-exclusive rights to Utility Access as provided in Section 1.2 below, and (iii) non-exclusive Access Rights as provided in Section 1.3 and Section 1.4 below. The Tower Parcel, Utility Access and Access Rights are collectively referred to herein as the "Premises" and are all shown on the site plan drawing attached hereto and incorporated herein as Exhibit B ("Site Plan").

1.2 Utility Rights. Licensee shall have the right to install and maintain utility wires, poles, cables and conduits from the Tower Parcel to the public rights-of-way as depicted on the Site Plan (the "Utility Access"). Licensee shall be responsible, at its sole cost and expense, for the repair of any damage or disturbance, to the extent caused by Licensee, its Sublicensees, and their respective agents, employee's, contractors (and subcontractors) to the RPA's utility lines (inclusive of water).

1.3 Temporary Construction Access. The RPA hereby grants to Licensee the right of entry and access, including ingress and egress, between the hours of 7:00 a.m. and 4:00 p.m., Monday through Friday only, on foot or by motor vehicle, including trucks over or along the Property, for all purposes necessary during the construction of the Wireless Communication Facility as depicted on the Site Plan (the "Temporary Construction Access"). Licensee shall provide a list of all workers and subcontractors that may need access to the Property during construction. Licensee shall, at its own costs and expense, provide security for the Property during construction of the Wireless Communications Facility. Security shall be provided in the form of a temporary construction barrier using security fencing or other materials as may be requested by the RPA. The Temporary Construction Access shall terminate upon the issuance of a certificate of occupancy or its equivalent.

1.4 Maintenance and Operations Access. Upon completion of the construction of the Wireless Communications

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Facility, the RPA hereby grants to Licensee the right of ingress and egress, seven days per week, 24 hours per day, on foot or by motor vehicle, including trucks (subject to the limitations set forth below) over or along the Property as depicted on the Site Plan (the "Maintenance and Operations Access" and together with the Temporary Construction Access, the "Access Rights"). All vehicular access utilizing the Maintenance and Operations Access shall be limited to "class 2" vehicles (as defined by the Federal Highway Administration), not exceeding 15,000 pounds gross vehicle weight and shall remain on the access way at all times. The Licensee, its Sublicensees, and their respective agents, employee's, contractors (and subcontractors) shall be responsible for the repair of any damage to the Property, including but not limited to, sidewalks, landscaping, storm drain, erosion control and perimeter walls, caused by the use of the Maintenance and Operations Access.

1.5 Right of Entry. The RPA shall have the right to enter the Premises during the Term hereof in the event of an emergency, inspection of the Premises and other purposes as may be required to carry out the terms and conditions of this Agreement.

2.0 OPTION.

2.1 Option Term. The RPA grants to Licensee an option to license the Premises on the terms and conditions described in this Agreement (the "Option"). The Option shall commence on the Effective Date of this Agreement and shall continue for a period of 18 months (the "Option Period"); provided that Licensee meets the Marketing Services and Due Diligence Services set forth on Schedule 2.1 attached hereto and incorporated herein (collectively, the "Preliminary Services"). Following the expiration of the Option Period, the Option will be automatically extended for one additional six month period ("Option Extension" and together with the Option Period, collectively, the "Option Term"), unless the Option is exercised or terminated in accordance with Section 2.2 below.

2.2 Exercise or Termination of Option. Except for representations, warranties and indemnities made by each Party to the other hereunder, this Agreement shall terminate with no further effect in the event Licensee (i) has not exercised its right as provided in Section 3.1 below during the Option Term; or (ii) Licensee has provided written notice of termination pursuant to Section 12.4.2 below during the Option Term; or (iii) the RPA has terminated this Agreement as a result of Licensee failing to meet the requirements of the Preliminary Services. Any notice or cancellation shall be communicated in accordance with the notice provision of this Agreement. Notwithstanding anything to the contrary herein, Licensee shall not be permitted to exercise its Option until satisfaction of Section 3.1 below.

3.0 TERM.

3.1 Initial Term. During the Option Term, the Licensee may commence the Term of this Agreement on the date that Licensee (i) secures at least one fully executed Collocation Agreement with a Wireless Carrier and (ii) submits an application to the Connecticut Siting Council for approval of the Wireless Communications Facility on the Premises ("Commencement Date") and terminating on the tenth anniversary of the Commencement Date, unless otherwise earlier terminated as provided herein (the "Initial Term"). The RPA and Licensee agree that they shall acknowledge in writing the Commencement Date.

3.2 Renewal. Upon expiration of the Initial Term, Licensee may extend the term of the Agreement automatically for up to four additional 5-year terms (individually each is referred to as an "Extension Term" and collectively the "Extension Terms" and together with the Initial Term, the "Term") on the same terms and conditions as set forth herein, unless Licensee delivers to the RPA written notice of its election not to exercise any renewal for an Extension Term at least 12 months prior to the expiration of the Initial Term or any then-current Extension Term, as applicable.

4.0 CONSIDERATION.

4.1 License Fee. The RPA shall receive a percentage of the revenue derived from Licensee and its Sublicensees or other occupants on the Tower in accordance with the revenue sharing schedule provided on Schedule 4.0 attached hereto and incorporated by reference herein ("License Fee").

4.2 Payment Due Date and Late Fee.

4.2.1 Due Date. The License Fee shall commence on the Commencement Date. All License Fees shall be due and payable on or before the tenth day of the month following the Commencement Date. Any partial months shall be pro-rated. Payment shall be mailed to the RPA at the RPA's principal place of business or deposited electronically via wiring instructions provided by the RPA. The RPA reserves the right to redirect the payment of any sums due hereunder to any other person or entity or to such other address as the RPA may, from time to time, designate in writing, at least 30 days in advance of any payment date.

4.2.2 Late Fee. Should the License Fee not be paid within 10 days following the date due, a ten percent (10%) late fee

shall be added to the amount due. Furthermore, any and all amounts payable by Licensee under this Agreement that are not paid within 10 days following the date due shall accrue interest at the rate of one percent (1%) per month from the date the amount first came due until paid or the maximum permitted by law. Licensee expressly agrees that the foregoing represents reasonable estimates of the RPA's costs in the event of delay in payment of the License Fee, and is not a penalty.

4-3 No Setoffs. All License Fees and Additional Consideration shall be paid in full directly to the RPA without demand or deduction, offset, abatement, diminution or reduction of any description. Licensee expressly waives any right of setoff.

4-4 Holding Over. Any holding over after the expiration of the Term with the consent of the RPA shall be construed to be on a month-to-month basis at a License Fee equal to (i) the full amount charged by Licensee to its Sublicensees that are holding over under their respective Collocation Agreements and/or (ii) two hundred percent (200%) on any holdover by Licensee for any of its equipment and shall otherwise be on the terms and conditions herein specified, unless otherwise provided in writing by the RPA.

4-5 Additional Consideration. Licensee shall pay the RPA additional consideration as part of this Agreement in accordance with the terms set forth on Schedule 4.o.

5.0 PERMITTED USE.

5.1 Licensee's Permitted Activities. The Licensee may only use the Premises (i) to construct, install, repair and maintain a new free-standing monopole up to 150' above ground level with the capability of expansion and capacity to hold no less than six Sublicensees (the "Tower") and (ii) to install, repair, replace, maintain and operate antennas, antenna support structures, utility lines, transmission lines, air conditioned equipment shelters, foundations, fences, electronic equipment, radio transmitting and receiving antennas, emergency generator (subject to the timing of intermittent maintenance testing as approved in writing by the RPA), supporting equipment and structures thereto (collectively, the "Wireless Communications Facility") as more particularly described on the plans prepared by Licensee's architectural & engineering ("A&E") firm entitled "The Stanley Lasker Richter Memorial Park," and attached hereto and incorporated herein as Exhibit C - Drawings (the "Plans"). The Plans shall be updated by the Licensee following the completion of the construction of the Tower and build-out for the Sublicensee(s) that may occur during the initial build-out ("As-Builts") and any subsequent addition, modification, removal, replacement and repair to the Wireless Communications Facility or other improvements by the Licensee or its Sublicensees during the Term hereof. Such updates to the Plans to be provided to the RPA within 30 days from date of completion of the work or the RPA shall have the right, at Licensee's sole cost and expense, to order the changes from Licensee's A&E firm or an A&E firm of RPA's choice. The Tower shall be constructed such that no utility lines (for example, fiber, conduit, power and coaxial) are attached or affixed to the outside the Tower, without the RPA's written consent, and the Wireless Communications Facility shall, to the extent reasonably possible, blend into the surrounding Property. Specifically, the equipment storage structures, emergency generator and all related devices shall be screened from view and camouflaged so as to conceal their purpose through fencing and materials approved by the RPA.

5.2 Public Safety Use. Licensee acknowledges and agrees that the City of Danbury Police and Fire Departments (collectively, "Public Safety") shall have the right to locate antennas, antenna support structures utility and transmission lines and other equipment necessary for the operation of each department's respective radio communications equipment on the Tower and within the Premises at no cost (collectively, the "Public Safety Facilities") as shown on the Plans. Public Safety shall, at its sole cost and expense, procure, install, maintain and operate all of the equipment necessary and incidental to the operation of their respective networks. Licensee shall not charge Licensor or Public Safety a fee for its occupancy on the Wireless Communications Facility, but all other terms of a Collocation Agreement shall substantially apply. Licensee shall coordinate directly with Public Safety on the Installation of the Public Safety Facilities.

5.3 Collocation.

5.3.1 Sublicense. Licensee shall have the right to sublicense space on the Wireless Communications Facility pursuant to a sublicense agreement on terms substantially similar to that form of agreement attached hereto as Exhibit D ("Collocation Agreement") to its customers in the business of transmitting and receiving radio communication signals within their licensed or unlicensed frequencies authorized by or subject to the Federal Communications Commission ("Wireless Carriers"). A "Sublicensee" means a Wireless Carrier that executes a Collocation Agreement with Licensee in order to gain access to the Wireless Communications Facility. Licensee shall provide to RPA a summary of the basic terms of each Collocation Agreement substantially similar to that sample schedule attached hereto as Schedule 5.o. Licensee shall charge each collocating carrier no less than the then current industry standard for FCC-licensed commercial wireless carriers collocating on a wireless facility in this Facility's market on any and all Collocation Agreements and any amendments thereto. Licensee shall exercise best efforts to include the RPA contact information in the notice section of any and all Collocation Agreements or other forms of agreement in the event of default of either Licensee or its Sublicensee. Licensee

shall provide copies of any and all fully executed Collocation Agreements and any and all fully executed amendments thereto to RPA.

5.3.2 Licensee shall continue to perform Marketing Services following the Commencement Date in order to achieve full occupancy of the Wireless Communications Facility. Licensee and the RPA shall discuss via telephone conference, on a mutually agreed upon basis (no less than two times per calendar year until achievement of full occupancy) to review the status of the business, including efforts made and planned by the Licensee to achieve full occupancy, including status of any pending deals. Should the RPA, in its reasonable discretion, request a meeting with Licensee in lieu of said telephone conference, Licensee shall meet with the RPA at a RPA designated location within the City of Danbury.

5.4 Expansion of Premises. In the event additional ground or vertical space is required outside of the Premises to accommodate potential customers, Licensee shall submit a proposed change to the Plans to the RPA along with the collocation application or other documentation evidencing bona fide interest in the Wireless Communications Facility. The RPA shall review the proposed changes in light of the primary purpose of the Property and either grant the requested expansion or deny the proposed changes with its basis thereof. In the event the RPA determines, in its sole, but reasonable discretion, that the proposed changes are not consistent with the primary purpose of the Property, then the Parties mutually agree to meet in a further attempt to solve the desired request for expansion to accommodate the potential customer's installation.

6.0 PROPERTY; AUTHORIZATION; CONSTRUCTION; MAINTENANCE AND RELEASE OF LIENS.

6.1 Property. Licensee has inspected the Property and takes the Premises in "AS-IS" condition without any representations or warranties from the RPA.

6.2 Permits. Promptly following the Effective Date, Licensee shall commence and diligently complete the 1A certification; TOWAIR and Airspace, and FAA Determination if necessary; and determination of location of Public Safety equipment upon the Wireless Communications Facility. All other work necessary to obtain permits and approvals as required by federal, state, county and municipal authorities to the extent such laws relate to Licensee's use of the Premises shall be commenced immediately once the first Collocation Agreement is fully executed between Licensee and a collocating Sublicensee. Nothing herein is intended to, nor shall excuse Licensee's compliance with all ordinances, codes, and regulations, including, but not limited to, zoning authorizations and building permits.

6.3 Government Approvals. It is understood and agreed that Licensee's ability to use the Premises is contingent upon it obtaining all the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any federal, state or local authorities as well as a satisfactory environmental, historic preservation, geological, NEPA, and soil boring tests usual and customary within the wireless telecommunications industry ("Reports") which will permit Licensee use of the Premises as set forth in this Agreement. The RPA shall cooperate with Licensee, at Licensee's sole cost and expense, in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Premises with respect to the permitted use. Licensee shall provide the RPA with all such Reports and Governmental Approvals the earlier of (i) 10 days from Licensee's receipt thereof, (ii) 90 days prior to start of construction, or (iii) 10 days following the termination or expiration of the Option.

6.4 Construction Notice Provision. Notwithstanding emergencies, Licensee shall deliver written notice to RPA containing the date and time periods and a brief description of construction activities planned to occur March 1 to November 1 of each year, a minimum of ten (10) days before any planned construction activity. No notice is required for construction activities planned for November 2 to the last day of February each year. RPA shall review and reply to Licensee within ten (10) days of receipt of written notice of said intended construction activity. RPA shall respond to Licensee either that said construction activity will not interfere with the operation of the golf course or that the proposed construction activity will, in RPA's reasonable discretion, interfere with the operation of the golf course. In the event RPA, in RPA's reasonable discretion determines the date and time of the proposed construction activity interferes with golf course activity, the RPA shall offer Licensee a reasonable alternate date / time to conduct said construction activity.

6.5 Construction. All construction shall be performed in strict compliance with the approved Plans, and no work may materially interfere with existing RPA uses on the Property, nor render the Property materially unfit for use by the RPA or damage any existing facilities of the RPA. Licensee agrees that all work shall be completed by licensed and qualified contractors, shall be done with good materials and workmanship and in a lien-free manner, and shall be done in strict compliance with all applicable laws and governmental regulations. Licensee shall keep the worksite clean during any construction of the Wireless Communications Facility.

6.6 Alterations.

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Licensee shall have the right to make modifications, repairs or replacements to the Wireless Communications Facility so long as such modifications, repairs or replacements (i) do not materially change the Wireless Communications Facility. Licensee shall charge Sublicensees no less than the then current industry standard rent proportionate to the equipment said Sublicensee installs or modifies on or within the Wireless Communications Facility. A proposed tower replacement or relocation, or a proposed ground space expansion outside the Premises, shall require written consent of the RPA, such consent not to be unreasonably withheld, delayed or conditioned. Should Licensee require additional ground space outside the currently demised Premises in order to accommodate the total number of carriers currently or proposing to collocate on the Wireless Communications Facility, the RPA shall be entitled to additional revenue for said additional ground space as provided in Schedule 4.0.

6.7 Maintenance. Except as otherwise expressly provided herein, Licensee shall be solely responsible, at its sole cost and expense, for all improvements to and maintenance of the Premises and for the construction, maintenance, up-keep, or repairs necessary to keep the Premises safe and serviceable for its intended use. Such maintenance to include, but not limited to maintaining the Premises by keeping it clear from weeds, vegetative overgrowth, replacing shrubs or other vegetation if dead or diseased, debris and repairing/painting any weathered or chipped/peeled painting of equipment, shelters, utility lines, etc. The RPA neither assumes, nor shall it have, any responsibility for the condition of the Premises. In the event the Licensee fails to maintain the Wireless Communications Facility or the Premises in a condition reasonably acceptable to the RPA pursuant to this Section 6.7, the RPA shall provide written notice to Licensee notifying Licensee of same, including a description of the condition that RPA identifies as requiring maintenance. Should Licensee fail to cure said condition within 30 thirty days after written notice, taking into consideration Licensee's exercise of best efforts to remediate the condition within the 30 days, then the RPA shall have the right, but not the obligation, to make such repair or undertake such maintenance to resolve the condition and/or thereafter maintain the Premises or Wireless Communications Facility all at Licensee's sole cost and expense. The RPA shall have the right to offset/charge the Licensee for any and all costs incurred by the RPA. Such costs and expenses to be reimbursed by the Licensee within 10 days from receipt of invoice from the RPA. The above notwithstanding, regarding the removal of snow and ice from the access way, Licensee shall maintain that portion of the access way that only Licensee and its Sublicensees use, free from snow and ice as Licensee deems appropriate. Other portions of the access way leading from the public street that Licensee shares with the RPA shall be co-maintained with the RPA, if used by the RPA. For clarification of the foregoing, in the event of snow and ice accumulation occurring on the RPA parking lot or maintenance area where Licensee shall have its Access Rights, Licensee shall be deemed to be the party responsible for the snow and ice removal across its access way. Notwithstanding anything to the contrary herein, the RPA shall have no liability or responsibility to the Licensee or its Sublicensees regarding the ingress or egress from the public way to the Wireless Communications Facility and Licensee shall indemnify the RPA of same.

6.8 Noise. Licensee shall comply with local noise ordinances and, if none are in effect, then not allow any excessive or objectionable levels of audible noise as determined by the RPA to be generated by the Wireless Communications Facility at all times during the Term of this Agreement. Licensor shall have the right to determine the type of generator to be installed on the Premises in terms of expected noise level specifications and the period of time within which any generator may be operated during routine maintenance testing.

6.9 Relocation. After the initial installation of the Wireless Communications Facility, the RPA may require Licensee to relocate all or a portion thereof to an alternative area in order to accommodate a renovation, reconstruction, modification or reconfiguration of all or part of the RPA Property. In the event of a required relocation under this section, the RPA shall provide at least 180 days' prior written notice to Licensee of the necessity of such relocation and the Parties shall each cooperate with each other in effecting the relocation of any equipment required to be relocated in order to assure at least the same level of quality of service or coverage that the Wireless Communications Facility provides as compared to that then currently existing. Licensee shall provide an estimate of the costs of any relocation within 30 days of receipt of the RPA's notice above. The RPA shall bear the costs of such relocation. Such relocation shall be done in a manner determined exclusively by RPA to (i) provide at least the same coverage levels as those existed prior to such relocation, and (ii) minimized disruption of Licensee's communications business during such relocation process.

6.10 Release of Liens. Licensee agrees that it will pay or cause to be paid all costs for work done by it or caused to be done by it on the Premises, and will keep the Premises free and clear of all mechanics' liens on account of work done by Licensee or persons claiming under it. Licensee may contest the validity or amount of any such lien and may appeal any adverse judgment or decree, provided, however, that at the written request of RPA, Licensee shall post a bond sufficient to remove such lien pending contest against the enforcement of the lien against RPA. If Licensee shall default in paying any charge for which a mechanic's lien and suit to foreclose the lien have been filed, and shall not be taking appropriate actions to contest the validity or amount of such lien within 30 days of the filing of such lien, the RPA may, after written notice to Licensee, pay said claim and the amount so paid shall be immediately due and owing from Licensee, and Licensee shall pay

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the same to RPA upon demand.

7.0 UTILITIES.

7.1 Licensee shall pay for all utilities it consumes in its operations on the Premises (separately metered). The RPA agrees to execute such documents as may be reasonably required by utility companies or others to provide such electrical and telephone (including fiber) service; provided, however, that any rights necessary for such power or telephone utilities shall be at a location reasonably acceptable to the RPA and the servicing utility company and may, at the RPA's election, be extinguished by the RPA at the termination of this Agreement. All utility lines shall be underground and shall be re-vegetated in a manner acceptable to the RPA, unless otherwise agreed upon by the Parties.

7.2 At the time of Licensee's installation of utilities, Licensee shall provide conduits and sufficient electrical capacity at the proposed multi-meter board to allow for the operation of the Public Safety Facilities at the Premises. Public Safety shall be responsible for ordering and installing its own meter at its sole cost and expense. Public Safety shall be responsible for connecting its power from the multi-meter board to Public Safety's equipment at its sole cost and expense. Public Safety will be responsible for paying its monthly recurring utility costs.

8.0 TAXES. Licensee shall pay all real and personal property taxes assessed on, or any portion of such taxes attributable to, Licensee's Facilities and use of the Premises. Failure by Licensee to pay such taxes after receipt of written notice and opportunity to cure is an event of default that could result in divesting the Licensee of any interest in or right of occupancy of the Premises. Licensee shall indemnify and hold the RPA harmless for any taxes incurred due to assessments on Licensee's Sublicensees.

9.0 INTERFERENCE.

9.1 Licensee Interference. The Wireless Communications Facility shall not create harmful radio frequency ("RF") interference with the operation of wireless systems of the RPA, and that of other pre-existing licensees, tenants or occupants, including but not limited to radio communication systems, machine-to-machine networks, utility meters, sprinkler systems, video systems, HVAC systems, electronically controlled systems, telephone systems, wi-fi systems or any other wireless system operating on the Property. If such interference in violation of this section occurs, Licensee agrees to take all reasonable actions as soon as practicable, including, but not limited to, ceasing all operations (except for intermittent testing) until such interference has been corrected to the reasonable satisfaction of the RPA. If such interference has not been corrected within 30 days after notice to Licensee of such interference, RPA shall have the right, in addition to all other rights and remedies at law or in equity, to require Licensee to remove the specific items causing such interference. In the event the RPA is compelled to correct the interference problem, the RPA shall not be liable for any costs, damages or losses associated with the RPA's actions.

9.2 RPA Interference. The RPA will exercise commercially reasonable efforts to limit any harmful RF interference to the Wireless Communications Facility. In the event the installation or operation of equipment belonging to the RPA or its licensees, tenants or occupants (such equipment installed or operated after the date the Licensee installed and commenced operations of its equipment) causes interference to Licensee, then the RPA agrees to use commercially reasonable efforts to correct the RF interference, including, but not limited to, ceasing all operations (except for intermittent testing) until the RF interference has been resolved to the reasonable satisfaction of the Licensee.

10.0 INDEMNIFICATION; LIMITATION OF LIABILITY.

10.1 To the extent permitted by law, Licensee shall indemnify, defend and hold harmless the RPA, the City of Danbury, and each board member, council member, officer, employee or agent thereof (the RPA, the City of Danbury, and any such person being herein called an "Indemnified Party") for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to reasonable attorneys' fees and court costs) to which any such Indemnified Party may become subject, on account of: (i) any damages, injury to person or property, or death of any person arising out of any negligent acts, intentional misconduct, errors, omissions, work, or services of Licensee, Sublicensees and their respective employees, agents, representatives, consultants and subcontractors on the Premises; (ii) any workers' compensation claims, unemployment compensation claims or unemployment disability compensation claims of employees of Licensee or claims under similar such laws or obligations to the extent arising out of Licensee's use of the Premises; or (iii) action properly taken by the RPA pursuant to this Agreement. This indemnification obligation shall not extend to any loss, claim, damage, injury or death, liability, costs, and expenses to the extent caused by the gross negligence or willful misconduct of the Indemnified Party. The provisions of this section shall survive termination or expiration of this Agreement.

10.2 The Indemnified Party: (i) shall promptly provide Licensee with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this section and provide Licensee with copies of any demands, notices,

summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the Licensee; and (iii) shall fully cooperate with the Licensee in the defense of the claim, demand, lawsuit, or the like.

10.3 Licensee Release. Licensee agrees that the RPA, the City of Danbury, and each of their respective board members, council members, officers, employees and agents (collectively, the "RPA Parties") shall not be liable to Licensee, and Licensee hereby releases the the RPA Parties, for any personal injury or damage to or loss of personal property from any cause whatsoever unless such damage, loss or injury is the result of the gross negligence or willful misconduct of the RPA Parties. The RPA Parties shall in no event be liable to Licensee for any consequential, incidental, exemplary or punitive damages in connection with the foregoing.

10.4 Limitation of Liability. EXCEPT FOR INDEMNIFICATION PURSUANT TO SECTION 10, NEITHER PARTY SHALL BE LIABLE TO THE OTHER, OR ANY OF THEIR RESPECTIVE AGENTS, REPRESENTATIVES OR EMPLOYEES FOR ANY LOST REVENUE, LOST PROFITS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, INCIDENTAL, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSS OF DATA OR INTERRUPTION OR LOSS OF USE OF SERVICE, EVEN IF ADVISED BY THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. THE MAXIMUM LIABILITY FOR THE RPA FOR ALL CLAIMS IN THE AGGREGATE SHALL NOT EXCEED THE AMOUNTS RECEIVED FROM LICENSEE FOR THE 12 MONTHS PRECEDING THE ALLEGED EVENT GIVING RISE TO THE CLAIM OR THE AMOUNT OF INSURANCE COVERAGE COVERING SUCH CLAIM, WHICHEVER IS GREATER.

11.0 INSURANCE.

11.1 Each Party shall, at such Party's sole cost and expense, procure and continue in force during the Term:

11.1.1 Workers' compensation insurance (at statutory limits) and employer's liability insurance with minimum limits required by state law;

11.1.2 Commercial general liability and property damage insurance (including completed operations and contractual liability) on an occurrence basis in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

11.2 All policies shall be written by an insurer licensed to do business within the State of Connecticut and shall provide that such coverage shall not be cancelled or materially, adversely changed without a minimum of 30 days' prior written notice to the other Party. The insurance maintained by Licensee described herein shall name the RPA as an additional insured as its interests shall appear with respect to operations conducted by Licensee pursuant to this Agreement.

11.3 Licensee Contractor Insurance. Licensee shall require that its contractors (and any subcontractors) and any Sublicensees, and their respective contractors (and any subcontractors) produce, prior to commencing any Site Activity Work, a certificate of insurance evidencing the existence of the insurance described in this Section 11 as well as builder's risk insurance with a limit not less than 100% of the estimated value of the improvements being constructed by or on behalf of such contractor or subcontractor. All policies under this Section 11 other than the workers' compensation policy shall name RPA as a named insured and shall contain a 30-day written notice of cancellation to RPA.

12. DEFAULT AND TERMINATION.

12.1 Default. It shall be an "Event of Default" of this Agreement if any one or more of the following events shall occur:

12.1.1 Either Party fails to pay any Licensee Fee or other amounts payable under this Agreement when due to the other Party, and said Party shall not remedy such failure within 10 days after written notice thereof from the other Party;

12.1.2 Either Party fails to observe or perform any other terms and conditions of this Agreement other than that specified in Section 12.1.1 above, and said Party shall not remedy such failure within 30 days after written notice of such failure by the other Party or, if such failure is not reasonably capable of being remedied in such period, if said Party shall not within such period commence to remedy such failure and thereafter continuously prosecute such remedy to completion not to exceed 90 days in total, unless otherwise agreed to in writing by the non-defaulting Party; or

12.1.3 Either Party makes an assignment of all or substantially all of its property for the benefit of creditors, or shall file a voluntary petition under any bankruptcy or insolvency law, or an involuntary petition alleging an act of bankruptcy or insolvency shall be filed against it under any bankruptcy or insolvency law, or whenever a petition shall be filed against a Party under the reorganization provisions of the United States Bankruptcy Act or under the provisions of any law of like import, or whenever a permanent receiver of a Party or for the property of a Party shall be appointed, and if such foregoing event occurs without the acquiescence or consent of said Party and continues or remains pending for 90 days after the occurrence of such event.

12.2 Termination. After the occurrence of an Event of Default, the non-defaulting Party shall be entitled to pursue any and all legal and equitable rights and remedies permitted by law or equity. Upon a valid termination of this Agreement, all rights of the Parties hereunder shall expire and terminate, except for those terms and conditions that, by their nature, shall survive, and Licensee shall thereupon quit and surrender possession of the Premises in the condition elsewhere herein required.

12.3 Remedies.

12.3.1 Notwithstanding anything to the contrary herein, in the event the RPA terminates this Agreement as a result of Licensee's Event of Default and failure to cure within the periods set forth in this Section 12, then, in addition to all other rights and remedies available to the RPA, the RPA may elect the following: (i) terminate this Agreement in the entirety and Licensee shall pay the RPA the greater of (a) the balance of then applicable Term or (b) 24 months of the then applicable License Fee; and/or (ii) re-enter the Premises and take possession thereof and remove all persons and personal property therefrom or make arrangements with the Licensee and its Sublicensees in order for Sublicensees to make payment directly to the RPA, upon which the RPA will withhold amounts due and payable and return the balance, if any, to the Licensee, similar to the process identified in Section 14.2 below.

12.3.2 In the event that the RPA fails to perform or observe any covenant, term or condition applicable to it under the terms of this Agreement beyond the applicable cure period, then Licensee may: (i) terminate the Agreement; (ii) initiate legal action to compel specific performance by the RPA; or (iii) if specific performance is not available as a remedy, Licensee may sue to recover its actual damages caused by the breach or failure of the RPA not to exceed any and all amounts received by the RPA under this Agreement.

12.4 Option Period Termination.

12.4.1 The RPA may terminate this Agreement during the Option Term without penalty or further obligations in the event Licensee does not fulfill the Preliminary Services as provided in Schedule 2.1.

12.4.2 During the Option Term, Licensee shall have the right to terminate this Agreement in the event that (i) any of such applications for Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by the issuing governmental authority; or (iii) Licensee determines that any soil boring tests are unsatisfactory. Notice of Licensee's exercise of its right to terminate shall be given to the RPA in writing in the manner set forth in Section 18 below. Any amounts paid prior to said termination date or owed to RPA shall be retained by or paid to the RPA. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder.

12.5 Automatic Termination of Utility Access and Access Rights. In the event this Agreement is terminated for any reason as set forth in this Section 12, the Utility Access and the Access Rights shall automatically terminate without further act of either Party.

12.6 Removal upon Termination or Expiration. Upon expiration or early termination of the Agreement, the RPA shall require the Licensee to remove the Wireless Communications Facility, including removal of all foundations down to three feet below grade, removal of utilities, and restoration of the access way and restore the Premises to its original condition, reasonable wear and tear excepted. Licensee shall post a Removal Bond reasonably acceptable to the RPA 30 days following the Commencement Date in the amount of \$50,000 to pay for and guarantee the removal of the Wireless Communications Facility as described above upon expiration or earlier termination of the Agreement. Said Removal Bond shall include the stipulation to remove the Wireless Communications Facility completely off the Property and into Licensee's or its successor's or assign's control. If Licensee fails to remove such Wireless Communications Facility within 90 days after expiration or earlier termination of this Agreement, the RPA shall exercise its rights under the Removal Bond to remove the Wireless Communications Facility off the Property and into Licensee's or its successor's or assign's control; however, in the event Licensee or its successors or assigns fail to accept receipt of the Wireless Communications Facility within 10 days from written notice by the RPA as provided for herein, then the RPA shall dispose of the Wireless Communications Facility in its sole discretion. Notwithstanding the foregoing, even if the Wireless Communications Facility is removed from the Property by exercise of the Removal Bond, the Wireless Communications Facility, including but not limited to the Tower, shall always remain the personal property of Licensee. The Licensee shall indemnify and hold the RPA harmless for any disposal or removal associated with the Wireless Communications Facility as well as any costs and expenses in excess of the Removal Bond.

13.0 CONDEMNATION.

13.1 Damage to the Licensee's Facilities. In the event the Wireless Communications Facility is destroyed or damaged in

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whole or in part by fire, lightning, windstorm, flood, earthquake, explosion, collapse, aircraft or other vehicle damage or other casualty, Licensee shall, within a period of 30 days after the date of such damage, commence the repair, reconstruction and restoration thereof and thereafter prosecute the same diligently to completion, and this Agreement shall continue in full force and effect. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within one year following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Licensee's operations at the Premises for more than one year, then Licensee may, at any time following such fire or other casualty, terminate this Agreement upon 90 days' prior written notice to the RPA. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due under this Agreement. Licensee shall present a site plan with proposed locations for any temporary equipment placed on, within or adjacent to the Premises for Licensor's review and approval, such approval not to be unreasonably withheld, during the repair/restoration period under this Section 13.1.

13.2 Abandonment of Premises. Licensee shall neither vacate nor abandon the Premises at any time during the Term of this Agreement. If Licensee abandons, vacates, or surrenders the Premises, or is disposed by process of law, or otherwise, the Wireless Communications Facility and any personal property belonging to Licensee and left on the Premises shall be deemed to have been abandoned. The RPA shall have the right to remove the abandoned equipment and dispose of such equipment at Licensee's cost and expense.

14.0 ANNUAL INCOME STATEMENTS.

14.1 Licensee shall provide the RPA with an income statement specific to the Premises. Licensee shall provide said income statement on June 30 and December 31 per every calendar year. Licensee shall provide copies of any and all fully executed Collocation Agreements and any and all fully executed amendments thereto to RPA.

15.0 ASSIGNMENT.

15.1 Assignment. Provided Licensee is not in default of this Agreement, Licensee shall have the right to assign or transfer ("Transfer") its license to the Premises (and any of Licensee's rights and obligations under this Agreement) without RPA's prior consent to such Transfer, provided that Licensee or its assignee provide written notice as soon as practicable following such Transfer and further provided that Licensee shall obtain RPA's prior written consent in the event that such transferee or assignee does not have financial strength at least equivalent to that of Licensee and has at least equivalent operations and experience building, operating and maintaining wireless communications facilities as Licensee. This Agreement shall be freely assigned by RPA.

16.0 QUIET ENJOYMENT. The RPA covenants that so long as Licensee performs the covenants, terms and conditions required of Licensee contained herein, and is not in default thereof beyond the expiration of any cure period, Licensee shall peaceably and quietly have, hold and enjoy the Premises for the Term hereof, and the RPA shall not in any manner interfere with or disrupt the Licensee's business or frustrate Licensee's Intended use.

17.0 NOTICES AND REQUESTS.

17.1 Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the Party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the RPA:

100 Aunt Hack Road
Danbury, Connecticut 06811
(203) 792-2550
Attn.: Leroy Diggs

With copy to:

Rosemark Law, LLC
100 Mill Plain Road, 3rd Floor
Danbury, Connecticut 06811
Attn.: Daniel S. Rosemark, Esq.

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Office (203) 297-8574
Email: Daniel@rosemark-law.com

If to Bay Communications II, LLC:

391 Oakland Street
Second Floor Rear
Mansfield, MA 02048
Office: (774) 749-2135
Email: jriley@baycommunicationsllc.com

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (a) when delivered to the Party, (b) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (c) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

17.2 During the Term of this Agreement, Licensee shall have in place a telephone and email system for the convenience of the RPA to contact Licensee in the event of an emergency. Licensee shall respond to the RPA as promptly as possible. The telephone and email address is as follows: Telephone: 774-749-2134 Email: jriley@baycommunicationsllc.com.

18.0 **HAZARDOUS SUBSTANCES.** Licensee shall hold the RPA harmless from and indemnify the RPA against any damage, loss, expense, response costs or liability, including consultant fees and reasonable attorneys' fees, resulting from hazardous substances generated, stored, disposed of or transported to, on or under the Premises by Licensee, Licensee's agents, employees, contractors, Sublicensees or other occupants, except to the extent such damage, loss, expense, costs or liability arises from the act or omission of the RPA or the RPA's employees, contractors, or agents. For purposes of this Agreement, hazardous substances shall mean (i) any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons, (ii) any substance which is flammable, radioactive, corrosive or carcinogenic, (iii) any substance the presence of which on the Premises causes or threatens to cause a nuisance or health hazard affecting human health, the environment, the Premises or property adjacent thereto or (iv) any substance the presence of which on the Premises requires investigation or remediation under any hazardous substance law, as the same may hereafter be amended. "Hazardous substance law" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §5901 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 *et seq.*; the Clean Water Act, 33 U.S.C. §1251 *et seq.*; the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; the Emergency Planning and Community Right to Know Act (SARA Title III) 42 U.S.C. §11001 *et seq.*; and any similar and applicable state law or regulation.

19.0 **RIGHT OF FIRST REFUSAL.** Intentionally Omitted.

20.0 **MISCELLANEOUS.**

20.1 Applicable Law; Venue. This Agreement and the rights and obligations of the undersigned Parties shall be governed by and construed in accordance with the laws of the State of Connecticut without regard to the choice of law rules thereof. The undersigned hereby irrevocably submit to the jurisdiction and venue of Danbury Superior Court or U.S. District Court for the District of Connecticut, over any action or proceeding arising out of any dispute between the undersigned, with respect to this Agreement.

20.2 Relationship of the Parties. It is clearly understood that each Party will act in its individual capacity as an independent contractor and not as an agent, employee, partner, joint venturer, associate of the other than as contracting Parties. An employee or agent of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The RPA does not have the authority to supervise or control the actual work of Licensee, its employees or subcontractors.

20.3 Laws and Regulations. Licensee shall keep fully informed and shall at all times during the performance of its obligations under this Agreement ensure that it and any person for whom the Licensee is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting this Agreement, including the following: (i) existing and

future state, federal and local laws and (ii) existing and future Occupational Safety and Health Administration ("OSHA") standards.

20.4 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement will promptly be physically amended to make such insertion or correction.

20.5 Authority. Each person executing this Agreement on behalf of any Party hereto warrants that they have the right and authority to execute this Agreement, and that all the procedures and approvals that are necessary and required to enable them to properly execute this Agreement and to bind the entity whom they represent in accordance with the terms hereof have been followed and/or secured. Each Party agrees to execute and deliver all documents and to perform all further acts as may be reasonably necessary to carry out the provisions of this Agreement.

20.6 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the RPA and the Licensee.

20.7 Sale of Property. If at any time during the term of this Agreement, the Property is sold, then such sale shall be under and subject to this Agreement and Licensee's rights hereunder.

20.8 Mortgages and Liens. At the RPA's option, this Agreement shall be subordinate to any mortgage by the RPA which may now or hereafter affect all of the RPA's property including the Property, provided that any such mortgage shall recognize the validity of this Agreement in the event of foreclosure of the RPA's interest and also recognize Licensee's right to remain in possession and have access to the Premises. Licensee shall execute whatever instruments may reasonably be required to evidence this subordination clause.

20.9 Binding Effect. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of the RPA and Licensee, subject to the terms and conditions hereof.

20.10 Headings. The headings, captions and numbers in this Agreement are solely for convenience and shall not be considered in construing or interpreting any provision in this Agreement. Wherever appropriate in this Agreement, the singular is to include the plural, if applicable.

20.11 Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute but one and the same agreement. The original execution pages of counterpart copies of this Agreement may be attached to any one such copy to form a single, complete document.

20.12 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the RPA of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the RPA to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the RPA's acceptance of and payment of License Fees, shall not release the Licensee from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the RPA to insist upon the strict performance of this Agreement.

20.13 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

20.14 Attorneys' Fees. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

20.15 Time of Performance. Time is of the essence in the performance of each obligation set forth in this Agreement.

20.16 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the Party drafting the Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize